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May 7, 2021

Thomas J. Curry
Nutter McClennen & Fish LLP
155 Seaport Boulevard
Boston, MA 02210

Dear Mr. Curry:

This letter is in response to your correspondence of March 10, 2021 to the Division of Banks (Division) requesting an opinion as to whether the individual automobile dealers owned by your client require licensure under G. L. c. 255B based upon the activities described in your correspondence.

As noted in your correspondence, you represent a client (Client) that owns multiple separately incorporated automobile dealerships (Dealers) located within Massachusetts. Your correspondence further confirms that each Dealer acts as a creditor or “retail seller” who sells motor vehicles to “retail buyers” under “retail installment contracts,” as those terms are defined by G. L. c. 255B, § 1. The retail installment contracts are routinely and immediately assigned to banks or licensed sales finance companies. The Dealers are not currently licensed by the Division.

The Dealers enter into agreements (Dealer Agreements) with the banks and licensed sales finance companies that purchase the retail installment contracts. According to your letter, the terms of these Dealer Agreements provide that the purchasers may “put back” loans to the Dealers under certain limited circumstances. As an example of such a situation, your correspondence notes that a motor vehicle sales finance company may decline to finance the purchase of a motor vehicle and put the retail installment contract back to the Dealer where a material change in the buyer’s financial situation, such as a bankruptcy filing, occurs shortly after the sale. The Dealers also may be required to indemnify the finance companies against losses on a loan and take back the installment sales contract under specified circumstances set forth in the Dealer Agreement, such as where a retail buyer brings litigation against a motor vehicle sales finance company related to the installment sales contract and/or ceases payments. According to your letter, the preceding examples are very rare, occurring fewer than five times in a twelve-month period.

Chapter 255B of the Massachusetts General Laws governs the licensing and supervision of motor vehicle sales finance companies. Pursuant to G. L. c. 255B, § 2, “[n]o person, other than a bank . . . or credit union . . . shall engage in the business of a sales finance company without first obtaining from the commissioner a license to carry on said business in the city or town where the business is to be transacted as provided herein.” Pursuant to G. L. c. 255B, § 1, a “sales finance company” is defined as:

- (1) a bank as defined in section one of chapter one hundred and sixty-seven, a national banking association, (2) any person engaged, in whole or in part, in the business of

purchasing retail instalment contracts from one or more retail sellers and (3) a retail seller engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers. The term "sales finance company" does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

The statute also defines "retail seller" as "a person who sells a motor vehicle to a retail buyer under or subject to a retail instalment contract." Further, G. L. c. 255B, § 1 defines "retail buyer" as "a person who buys or agrees to buy a motor vehicle from a retail seller for use primarily for personal, family or household purposes and who executes a retail instalment contract in connection therewith, or any legal successor in interest to such person, notwithstanding that he may have entered into one or more extension or refinancing agreements."

As expressly noted in your correspondence, the Dealers are not purchasing the retail installment contracts from retail sellers; rather, they are taking such contracts back from the sales finance company pursuant to the terms of the Dealer Agreement. Likewise, in the situation you describe, since the retail installment contracts are immediately assigned to the sales finance companies, the Dealers are not acquiring the retail installment contracts from a retail buyer as those terms are defined in the statute. Accordingly, it is the position of the Division that the Dealers are not required to be licensed as sales finance companies under G. L. c. 255B. This is consistent with the Division's longstanding position that assignees of retail installment contracts from sales finance companies are not required to be licensed. *See* Division Opinions 96-017, 97-107, 97-123, and 97-194. Please note, however, that certain sections of chapter 255B are applicable to "holders" of retail installment contracts, including sections 11, 15, 17, 19, 19A and 20. The Dealers should review these sections, as well as chapter 255B in its entirety, for their applicability. Please also note that your Client may need a loan servicer registration pursuant to G. L. c. 93, §24A if it is servicing any contracts on behalf of the Dealers. Lastly, your request asks the Division to opine "that the Client retains the right to enforce the terms of a returned retail installment sales contract." Please note, the Division is unable to provide an advisory legal opinion with regard to this aspect of your request, as such a determination would likely involve the specific contractual agreements between the Dealers and your Client, and may also implicate the provisions of the Massachusetts Uniform Commercial Code.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Barbara Keefe
Deputy Commissioner of Banks
and General Counsel